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September 10, 2020

Via ECF

The Honorable Sarah Netburn
United States Magistrate Judge
Thurgood Marshall Courthouse
40 Foley Square, Room 430
New York, NY 10007

Re: *Rich v. Fox News Network LLC et al.*, No. 18-cv-2223

Dear Judge Netburn:

This letter responds to Fox's letter of today, of which Plaintiffs received no notice, seemingly urging yet another extension of the schedule. Counsel for Plaintiffs, Fox, and Malia Zimmerman had an **hour-long** meet and confer yesterday regarding scheduling, during which Fox gave no indication that it intended to make a submission to the Court in advance of the hearing tomorrow regarding Defendant Butowsky's scheduling issues. The letter is without merit for two reasons.

Mr. Butowsky said he will comply with the overall schedule. Plaintiffs' counsel met and conferred with Mr. Butowsky's counsel today in preparation for tomorrow's conference. Mr. Quainton confirmed what he represented in the joint letter to the Court (Dkt. 175) – that he believes Mr. Butowsky can adhere to the overall discovery deadline of December 31, 2020, just not necessarily the *interim* deadlines. Indeed, as counsel intended to inform the Court tomorrow, Mr. Butowsky today agreed to the following deadlines regarding document discovery:

- By September 15, 2020, Mr. Butowsky will provide a declaration regarding the destruction of some of Mr. Butowsky's data;
- By September 16, 2020, Mr. Butowsky will provide redacted versions of the AT&T phone records that were the subject of a now-resolved motion for protective order; and

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- By September 17, 2020, Mr. Butowsky will produce the documents that were originally to be produced by August 4, 2020 (before Mr. Butowsky's health incident).

Therefore, the issues raised in Plaintiffs September 1, 2020, letter (Dkt. 189) are resolved.

In addition, Mr. Butowsky's counsel stated that Mr. Butowsky can be deposed on October 27, 28, or 29, 2020 – dates that are within the interim deadlines and work for Plaintiffs' counsel. It is *Fox's* counsel who stated, as a blanket matter and without explanation, that that entire week does not work. Fox has a large team of lawyers. Although several other depositions have been scheduled for that week, including Joel and Mary Rich, and defendant Malia Zimmerman, Plaintiffs submit that some of those depositions can be moved (there are two relatively open weeks in October) if need be.

Finally, Mr. Butowsky's counsel today reiterated that he believed he could comply with the interim expert deadlines.

There is no barrier to completing depositions timely. Fox's suggestion that Plaintiffs are impairing the timely completion of depositions is unwarranted. The reference to September 18 is irrelevant – the Court, at Fox's request, vacated that deadline. Plaintiffs asked to move two Fox depositions and Rod Wheeler's deposition to after September 22 in light of Mr. Butowsky's delayed document production. Those depositions have now been scheduled.

As for Fox's suggestion that Plaintiffs misrepresented the number of Fox depositions they intended to take, that, too, is an unfair characterization. Plaintiffs have noticed **ten** depositions of current Fox News employees (including Zimmerman, a defendant), and a 30(b)(6) deposition (see table below, Fox News employees are in **bold**). Fox's counsel said yesterday that they would refuse to allow one of those employees (Laura Ingraham) to be deposed, and declined to offer dates within the interim deadlines for the 30(b)(6) deposition. Every single other Fox News employee has been scheduled (see table, below). Plaintiffs agreed, **at Fox's request**, that two of those depositions – Jay Wallace and Irena Briganti – can take place in November. Three of the proposed Fox News depositions will take, at most, half a day, and Plaintiffs said yesterday that they would be willing to agree to that in writing.

As for five former Fox employees and contributors Plaintiffs have subpoenaed, Fox cannot refuse (as it has) to take responsibility for its contributors and former employees on one hand, and claim them as employees for purposes of deposition numbers on the other. Again, three of these individuals will take only half a day, and there is ample time to schedule their depositions. As for former employee Adam Housley, his deposition has been scheduled – again at Fox's request, although Mr. Housley has his own counsel – for early November.

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Deponent	Date	Affiliation	Noticed By	Est. Length
Greg Wilson	9/22	Fox News	Plaintiffs	
Bill Sammon	9/25	Fox News	Plaintiffs	
Tom Lowell	10/2	Fox News	Plaintiffs	
Lou Dobbs	10/7	Fox News	Plaintiffs	½ day
Rod Wheeler	10/13	Wheeler	Fox/Plaintiffs	
Refet Kaplan	10/16	Fox News	Plaintiffs	
Malia Zimmerman	10/26	Fox News/Defendant	Plaintiffs	
Ed Butowsky deposition	10/27, 28, 29	Defendant	Plaintiffs	
Joel and Mary Rich	10/29-10/30	Plaintiff	Fox	
Sean Hannity	10/30	Fox News	Plaintiffs	½ day
Adam Housley	11/4**	Former Fox News	Plaintiffs	
Jay Wallace	11/10	Fox News	Plaintiffs	
Irena Briganti deposition	11/13	Fox News	Plaintiffs	
Fox 30(b)(6) deposition	TBD	Fox News	Plaintiffs	
Laura Ingraham	TBD	Fox News	Plaintiffs	½ day
Ken LaCorte	TBD	Former Fox News	Plaintiffs	
Newt Gingrich	TBD	Fox News contributor	Plaintiffs	½ day
Tom McInerney	TBD	Former Fox News contributor	Plaintiffs	½ day
Andrew Napolitano	TBD	Fox News contributor	Plaintiffs	½ day
Jack Abernethy	TBD	Fox Television	Plaintiffs	


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Brad Bauman	TBD	Plaintiffs' former PR	Fox	
Dr. Andrew Gard	TBD	Plaintiffs' doctor	Fox	
Dr. Robert Atherton	TBD	Plaintiffs' doctor	Fox	

Plaintiffs have been, and remain, willing to make accommodations to the interim deadlines for specific witnesses and, had Fox suggested altering interim deadlines instead of going to the Court, Plaintiffs could have considered the proposal proposal. There is no reason that the parties cannot comply with the current interim deadlines, much less with the December 31, 2020, deadline. To further delay the deadlines at this time would be prejudicial to Joel and Mary Rich, and unnecessary.

Respectfully,



Elisha Barron

Counsel for Joel & Mary Rich